

**HAMPTON ZONING BOARD OF ADJUSTMENT  
MINUTES  
October 20, 2011**

**Members Present**

Bill O'Brien, Chairman  
Vic Lessard  
Tom McGuirk  
Ed St. Pierre  
Bryan Provencal

**Others Present**

Kevin Schultz, Building Inspector  
Joan Rice, Secretary

Chairman O'Brien called the meeting to order at 7:00 p.m.

Chairman O'Brien introduced the members of the Board.

The Pledge of Allegiance was said.

**PETITION SESSION**

Chairman O'Brien announced that Petition **35-11** has been withdrawn.

**33-11** The petition of Susan Schwartz for property located at 85 Mill Street seeking relief from Article IV, Table II, Section 4.2, 4.3 and footnote 22 to create a second lot for a residence that will be built for the applicant's parents. The new lot will have 87.75 feet of frontage where 125 feet is required, a lot width of 90.5 ft +/- where 125 feet is required and requires minor relief of 6 feet or less on one side from the square requirement of footnote 22 to the dimensional table. The lot to be created is otherwise conforming with 37,325 +/- sq. ft. area where 15,000 is required. There are no wetlands on the property. This property is located at Map 162, Lot 6 in a RA zone.

Petitioner Susan Schwartz and Attorney Michael Donahue, Donahue, Tucker & Ciandella, came forward. Attorney Donahue said they had been at the August 18<sup>th</sup> meeting. There were some problems and the petition was withdrawn at that time. Work has been done on the plan and the new design addresses the concerns. The lot configuration has been substantially revised to eliminate the pork chop appearance of the new lot and the second driveway access point. Attorney Donahue said he believed the relief sought is extremely minor.

Bruce Scamman, Emanuel Engineering, came forward. He showed maps of the property and said they had spoken to abutters, Mr. and Mrs. Manning to the west of the property. Discussions were held regarding the driveway. Mr. Scamman said he felt the safety issue

was now addressed since the existing driveway is used. He said drainage was not an issue. There used to be a problem here, but it has been fixed. There has never been a drainage problem since the Schwartz family moved in.

Attorney Donahue said the issue is frontage and this plan is just short of what is required. There are properties adjacent with the same issue. Attorney Donahue said there is nothing contrary to the spirit of the ordinance and nothing that would harm property values. This property is not in wetlands and there are no development constraints on this property other than the variance requested. This structure will be at least 210 feet away from abutters. Attorney Donahue stated he had previously addressed the five criteria and felt they had been met.

#### *Questions from the Board*

Mr. McGuirk said this plan was much better. He asked about Lot 6. Attorney Donahue said Lot 6 is the Schwartz property. Mr. Lessard said this plan was much better.

#### *Comments from the Audience*

Tom Manning, 79 Mill Road, came forward. Mr. Manning thanked Mr. Scamman for meeting with him. He said this is the best solution he has seen, but he still has some reservations. Mr. Manning said the petitioner should have asked for approval to add a second in-law residence. Also he does not believe there is any hardship.

#### *Back to the Board*

Mr. Lessard asked when the house was purchased. Ms. Schwartz replied it was purchased in December, 2010. Attorney Donahue said the additional unit at the present property has been there since at least 1979 and is still totally conforming. To oppose this variance on the basis of the 2<sup>nd</sup> unit is not right. Mr. McGuirk said this property is listed as single family on the tax card. Mr. Schultz said this is a petition to sub-divide the lot. Anything else is not important. Mr. McGuirk said that the tax card should be corrected. Mr. Lessard said the Board should approve the splitting of the lot if there is enough room.

Chairman O'Brien said the Board should focus only on the application itself. The Petitioner has the responsibility to work with the assessor to straighten things out. Mr. St. Pierre said this would not be different than others in the neighborhood.

Chairman O'Brien said he would like to see something on the plot plan that shows a perpetual easement for a driveway. Attorney Donahue said they would submit a revised plot plan showing the easement and would include the easement in the deed.

**Moved** by Mr. McGuirk and seconded by Mr. Lessard, to grant Petition 33-11 subject to the requirement that there be a shared driveway and that the driveway easement be reflected on the subdivision plan and in the deed.

Chairman O'Brien asked the Board if they felt the five criteria had been met. All members agreed that they had.

**VOTE:** 5-0-0. Motion passed unanimously.

**34-11** The petition of Jay Ponchak and Sharon B. Ponchak for property located at 15 Mace Road seeking relief from Article IV, Section 4.2, 4.3 and Footnote 22 to subdivide the existing 1.37 acre lot into two residential lots where the "to be created" lot will not have the required frontage or lot width. This property is located on Map 128, Lot 49-2 in a RA zone.

Petitioner Sharon Ponchak and Attorney Stephen Ells, Holmes & Ells, came forward. Attorney Ells said they are asking to allow the existing 1.37 acre lot to be sub-divided into two residential lots. The lot to be created will have only 70 feet of frontage. In 1991 a prior owner came before this Board with a similar request and the petition was denied for failure of the applicant to prove the hardship element and the Board said it did not meet the spirit of the ordinance. As of today the Simplex Techs are used for hardship and it is different.

Chairman O'Brien asked if a petition is denied, can the applicant come back after two years with the same plan. Mr. Schultz said no, it has to be materially different.

**Moved** by Mr. McGuirk and seconded by Mr. St. Pierre, to hear Petition 34-11.

**VOTE:** 4-0-1 (Provincial). Motion passed.

Attorney Ells said this Petition is to ask permission to divide the parcel into two residential lots. It was thought to be appropriate that the main house have full frontage. Attorney Ells asked the Board to focus on the character of the neighborhood as there have been similar requests granted in the past few years. He said he felt the request was reasonable. Attorney Ells went through the five criteria and said he felt they had been met.

#### *Questions from the Board*

Mr. McGuirk asked why the Petitioner wanted to maintain the wooded areas. Attorney Ells replied that it would enhance the property.

#### *Comments from the Audience*

Mr. Edward Howard, 29 Mace Road, came forward. Mr. Howard said he felt the granting of this petition would lower his property values. He said the new residence will be right in

his backyard. Mr. Howard said his house was built in 1878 and a lot of construction in the area would compromise it.

Attorney Ells said that the proposal is to build the home to the rear and to save the trees.

Ms. Gail Howard, 29 Mace Road, came forward. She said their home is on the market and she did not feel many purchasers would like this.

*Back to the Board*

Mr. McGuirk said the Howard's house is 3 feet closer to the Ponchak's property than it should be. Therefore, it is more the Howard's problem.

Attorney Ells said there is a blank slate for the location of the house and the petitioner is very flexible and would also be happy to not cut any woods except for the driveway.

Mr. McGuirk asked Ms. Ponchak what her intentions were for this new lot. She replied it was for her child and there was no intention to build the house now. This is basically estate planning.

Chairman O'Brien said he had a problem with footnote 22. Mr. Provencal said the issues pertaining to this issue this time have not changed. The original subdivision submitted by the builder created this problem. Attorney Ells said the Planning Board approved this plan a long time ago and caused this problem. This should not be held against the petitioners. Mr. St. Pierre said he felt when the petitioners bought the property they should have known it could not be subdivided.

**Moved** by Mr. McGuirk, seconded by Mr. Lessard, to grant Petition 34-11 subject to the maintenance of a wooded buffer on the southeast side adjacent to 29 Mace Road and there should also be a buffer adjacent to 33 Mace Road.

Chairman O'Brien asked the Board if they felt the five criteria had been met. Mr. McGuirk and Mr. Lessard said they had. Chairman O'Brien, Mr. St. Pierre and Mr. Provencal said they had not.

**VOTE:** 2 -3 (O'Brien, St. Pierre, Provencal). Motion failed.

**36-11** The petition of Lisa Marino and Michael Bate for property located at 7 Moccasin Lane seeking relief from Article IV, Item No. 4.1.1 to request a variance from a dimensional requirement for constructing a single family dwelling (to serve as a primary residence) on the plot of land measuring approximately 100 ft. x 100 ft. (10,000 sq. ft.) where 15,000 sq. ft. is required. The property is located on Map 115, Lot 33, in an RA zone.

Petitioners Lisa Marino and Michael Bates came forward. Mr. Bates said they bought the land earlier this year and want to construct a single family residence to serve as a primary residence. Mr. Bates went through the five criteria and said he felt they had been met.

*Questions from the Board*

There were no questions from the Board.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

**Moved** by Mr. Provencal and seconded by Mr. St. Pierre, to grant Petition 36-11.

Chairman O'Brien asked the Board if they felt the five criteria had been met. All members agreed that they had.

**VOTE:** 5-0-0. Motion passed unanimously.

**37-11** The petition of Nancy S. Tatsis and Vasilios N. Tatsis, as Trustees of the Nancy S. Tatsis Revocable Trust of 1992, for property located at 5 15<sup>th</sup> Street seeking relief from Articles 1.3 and 4.5.1 to allow for a second floor addition and east side Deck. The property is located at Map 183, Lot 20 in an RA zone.

Petitioner Nancy Tatsis and Attorney Robert Casassa, Casassa & Ryan, came forward. Mr. Schultz said he had received an amended set of plans yesterday. The Petitioners are withdrawing their request for a variance for an east side deck. In summary, the applicant only needs a variance to put on a second floor and expand the east and west sides by 18 inches. They need relief from 1.3 and 4.5.1.

Attorney Casassa went through the five criteria and said he felt they had been met.

*Questions from the Board*

Mr. Schultz asked if the structure would be cantilevered on the east and west only. Attorney Casassa said that was correct.

*Comments from the Audience*

There were no comments from the Audience.

*Back to the Board*

**Moved** by Mr. Lessard and seconded by Mr. McGuirk, to grant Petition 37-11, with the condition that a new plot plan be submitted that indicates the deletion of the deck.

Chairman O'Brien asked the Board if they felt the five criteria had been met. All members agreed that they had.

**VOTE:** 5-0-0. Motion passed unanimously.

**BUSINESS SESSION**

**Adoption of Minutes**

**Moved** by Mr. Lessard and seconded by Mr. McGuirk, to approve the Minutes of September 29, 2011.

**VOTE:** 4-0-1 (Provencal). Motion passed.

**Discussion on 152 North Shore Road**

Henry Boyd, Millennium Engineers, came forward. Mr. Boyd said he was coming before the Board for informational purposes only. He said the variance they had received from this Board subdivided land on North Shore Road into three lots. However, they could not get the required 5,000 sq. ft. contiguous area for one lot. Therefore their plan was changed slightly. The Planning Board wanted them to return to the Zoning Board as a courtesy because the lot lines are different.

**Moved** by Mr. Lessard and seconded by Mr. Provencal, to approve the lot line changes made to the plans for 152 North Shore Road.

**VOTE:** 5-0-0. Motion passed unanimously.

**Adjournment**

**Moved** by Mr. McGuirk and seconded by Mr. Lessard, to adjourn the meeting at 9:50 p.m.

**VOTE:** 5-0-0. Motion passed unanimously.

Respectfully submitted,

Joan Rice  
Secretary